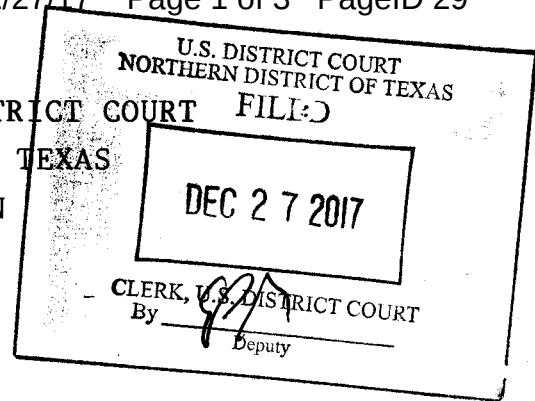


IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



ERIC FABIAN CRUZ,

Petitioner,

v.

Case No. 3:17-CV-2164-D-BF
(3:15-CR-0474-D)

UNITED STATES OF AMERICA,
Respondent.

REPLY TO GOVERNMENT'S RESPONSE

Defendant Eric Fabian Cruz files this Reply to the Government's Response and respectfully shows the Court the following:

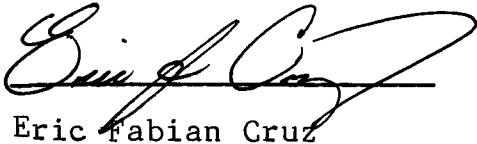
APPLICABLE LAW

To establish ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient and that the deficient performance prejudiced his defense. Strickland v. Washington, 466 US 668, 687-688, 104 S. Ct. 2052, 80 L. ed 2d 674(1984). To prove the deficient performance under Strickland, a petitioner must show that counsel made errors so serious that he or she was not functioning as counsel guaranteed by the Sixth Amendment. Id. The proper measure of attorney performance is reasonableness under prevailing professional norms. To demonstrate prejudice in the context of a guilty plea, the petitioner must show that "counsel's constitutionally ineffective performance affected the outcome of the process." Hill v. Lockhart, 474 US 52, 59, 106 S. Ct 366, 88 L.Ed 2d 203 (1985). To prevail on a claim of ineffective assistance of counsel at sentencing, the petitioner must demonstrate that his sentence was

Glover v. United States, 531 US 198, 200, 203-204, 121 S. Ct 696, 148 L. Ed. 2d 604 (2001).

Here Counsel was ineffective for failing to object to the Career-Offender enhancement at sentencing and preserve the claim for direct appeal. Because this claim was not properly preserved, Petitioner was subjected to plain error review. The outcome would have been different had Counsel properly preserved the claim. Therefore, Counsel was ineffective and Petitioner is entitled to relief under 2255.

Respectfully Submitted,



Eric Fabian Cruz

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
CLERK OF THE COURT
1100 Commerce Street
Dallas, TX 75242

75242-131395

